

Congress of the United States

Washington, DC 20510

December 9, 2022

The Honorable Joseph R. Biden
President
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear President Biden:

As members of the Protection of Civilians in Conflict Caucus, we write in response to reports describing the new Biden Administration targeting standards employed outside conventional war zones in countries such as Somalia and Yemen.

We are heartened to read that the new policy reportedly requires the military establish “near certainty” that the intended target is a member of a designated terrorist group approved for direct action and near certainty that no civilians will be killed or injured. We also commend the Administration for reportedly halting “signature strikes” or strikes based on patterns of suspicious behavior associated with terrorist activities.¹

We are concerned, however, about some of the reporting regarding the new direct action policy. Our concerns include: (1) the lack of transparency surrounding the policy, (2) the willingness of partner forces to adhere to U.S. standards, and (3) the apparent exemption of collective self-defense operations.

Transparency

As members of Congress, a co-equal branch of government, we are charged with the responsibility to ensure the American people understand the basic criteria the government uses before it employs lethal force abroad. Transparency surrounding the use of force is critical to ensure democratic accountability. We urge you to make the new policy public, to the fullest extent possible, along with an explanation for how it comports with our nation’s laws and international legal obligations. We also request you clarify how the policy aligns with the commitments made in your National Security Strategy to “minimize civilian casualties” and use force only as a last resort.²

¹ [White House Tightens Rules on Counterterrorism Drone Strikes - The New York Times \(nytimes.com\)](https://www.nytimes.com/2022/12/09/us/politics/biden-drone-strikes-rules.html)

² In particular, the unclassified report on legal and policy frameworks for the United States’ use of military force mandated by 50 U.S.C. 1549 provides the Administration an opportunity to offer additional transparency in an official government release.

Allied and Partner Strikes

We are also concerned with how these targeting standards will be applied during operations with partners and allies. Conducting operations in concert with foreign security forces has been a hallmark of U.S. counterterrorism strategy for decades. As new drone technologies proliferate across the globe, we are concerned that some partner forces with whom we share intelligence or conduct joint operations will be unwilling to adopt our targeting standards when they conduct offensive strikes against joint objectives, on our behalf, even though many of our partners may now have capabilities to achieve the standard.

Strikes in Defense of Allies and Partners

America's standing abroad can also be adversely affected if strikes conducted in defense of partners do not meet appropriate standards. We are concerned that "collective self-defense strikes" conducted in support of partner forces undermine the intent of the U.S. counterterrorism policy. Previous operations have stretched the concept of collective self-defense to allow partner forces to eschew targeting standards and legal norms in unwarranted situations. Congress and the American people deserve clarity on how the Biden Administration is defining collective self-defense, and how it complies with domestic and international law.

We request that the Administration answer the following questions regarding direct action outside of conventional war zones:

1. Similar to the public release of previous White House direct action policies, will the Biden Administration release a public version of the new direct action policy?
2. How does the new policy comport with our nation's laws and international legal obligations, as well as commitments made in the National Security Strategy regarding minimization of civilian casualties, the use of force as a last resort, and public transparency and the rule of law?
3. When the U.S. government shares intelligence that may result in offensive, direct action against a U.S. counterterrorism objective, does the U.S. government require the partner force to adhere to the U.S. direct action policy? If we do not, in the Administration's view, what would the risks and benefits be of establishing that principle?
4. How has the U.S. government defined "collective self-defense" for the purposes of this policy? What basis does this term have in U.S. and international law? How has the U.S. communicated "collective self-defense" standards to partner forces?
5. Which targeting standard applies to U.S. strikes conducted in self-defense or collective self-defense? How does this standard comply with domestic and international law?

6. Does the U.S. government require partner forces to have any processes or mechanisms in place to make collateral damage estimates or to evaluate and respond to allegations of civilian harm? What information have partner forces received about the new direct action policy and their related obligations?

7. What actions, if any, is the U.S. government taking to ensure all direct action conducted by a partner force, on our behalf, against joint objectives meets the near certainty standards? Does the U.S. government, for example, review strike data from partner forces and monitor related civilian harm allegations?

We welcome your commitment to prevent and address civilian harm caused by U.S. military operations and ensure democratic accountability for the use of force. We thank you for your attention to these concerns and look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Crow".

Jason Crow
Member of Congress

A handwritten signature in blue ink, appearing to read "Sara Jacobs".

Sara Jacobs
Member of Congress

A handwritten signature in blue ink, appearing to read "Tom Malinowski".

Tom Malinowski
Member of Congress